

U.S. Patent Application Serial No. 10/697,944
Amendment filed October 18, 2007
Reply to OA dated May 18, 2007

REMARKS

Claims 1 and 21 - 23 have been amended in order to more particularly point out, and distinctly claim the subject matter to which the applicant regards as his invention. It is believed that this Amendment is fully responsive to the Office Action dated May 18, 2007.

Claims 1-6, 22, and 23 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Claims 1 - 5 and 21 - 23 are pending in this application and have been rejected. Claims 6 - 20 have been canceled without prejudice or disclaimer.

Typographical errors have been corrected in claims 1 and 22. Claim 6 has been canceled. Claims 1, 21, 22, 23 have been amended to delete "on" and insert "over" instead, except for "on" recited in line 9 of claim 21.

Concerning the rejection of the claims under 35 U.S.C. 112, first paragraph, claims 1, 22 and 23 have been amended to define that a first-layer metal wiring is electrically connected to the upper electrode via a contact hole. See Figs. 1R and 13N for this feature. It is respectfully submitted that the amended claims meet the written description requirement. It is also respectfully submitted that

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the rejection of claim 6 for lack of the written description requirement is now moot since claim 6 has been canceled, without prejudice or disclaimer.

Claim 21 has been rejected under 35 U.S.C. 102(e) as being anticipated by Hikosaka et al. (U.S. 2002/0061620). The applicant respectfully requests reconsideration of this anticipation rejection.

The Examiner has taken the position that the second insulating film in claim 21 is disclosed in Hikosaka et al. as a film 23. However, Hikosaka et al. does not disclose what is required in claim 21; i.e., *a second insulating film formed, in its entirety, on the second capacitor protection insulating film*. Referring to Fig. 11, Hikosaka's film 23 is formed after "local wiring 22a" is formed; thus, the "local wiring 22a" intervenes between the films 23 and 21.

Accordingly, since not all of the claimed elements, as recited in independent claim 21, are found exactly the same situation and united in the same way to perform the identical function in Hikosaka's apparatus, there can be no anticipation of the claimed device based on the teachings of Hikosaka.

In view of the above, the withdrawal of the outstanding rejection under 35 USC 102(e) based on Hikosaka is in order, and is therefore respectfully solicited.

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Claims 1 - 6, 22 and 23 have been rejected under 35 U.S.C 102(b) as being anticipated by Okutoh et al. (USP 6,201,271). The applicant respectfully requests reconsideration of this anticipation rejection.

Claim 22 requires, in part, that a first-layer metal wiring is: (a) formed on the second insulating film, and (b) connected electrically to the upper electrode via a contact hole extending through the second insulating film. Claim 1 further requires that the second insulating film is formed, in its entirety, directly on the second capacitor protection insulating film.

In the outstanding anticipation rejection, the examiner alleges that Okutoh's film 24 corresponds to the presently claimed first-layer metal wiring and that Okutoh's film 17 corresponds to the presently claimed "second insulating film." However, as illustrated in Okutoh's Fig. 8, the alleged first-layer metal wiring 24 is not connected electrically to the upper electrode 15 via a contact hole extending through the alleged second insulating film 17; and the alleged second insulating film 17 is not formed in its entirety directly on the alleged second capacitor protection insulating film 13.

Thus, since not all of the claimed elements, as recited in independent claims 1 and 22, are found exactly the same situation and united in the same way to perform the identical function in Okutoh's apparatus, there can be no anticipation of the claimed device based on the teachings of and Okutoh.

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Moreover, claims 2 - 5 depend on independent claim 1, and claim 23 depends on independent claim 22. Claims 2 - 5 and 23 thus further limit the scope of the independent claims. Therefore, at least for the reasons set forth above with respect to claims 1 and 22, claims 2 - 5 and 23 should be similarly allowable.

In view of the above, the withdrawal of the outstanding anticipation rejection under 35 U.S.C 102(b) based on Okutoh et al. (USP 6,201,271) is in order, and is therefore respectfully solicited.

In view of the aforementioned amendments and accompanying remarks, claims, as amended, are in condition for allowance, which action, at an early date, is requested.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the applicant's undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

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In the event that this paper is not timely filed, the applicant respectfully petitions for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper to Deposit Account No. 01-2340.

Respectfully submitted,

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